

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAVELERS CASUALTY AND SURETY COMPANY
as Administrator for RELIANCE INSURANCE
COMPANY,

Plaintiff,

- against -

DORMITORY AUTHORITY – STATE OF NEW
YORK, TDX CONSTRUCTION CORP., and KOHN
PEDERSEN FOX ASSOCIATES, P.C..

Defendants.

AND THIRD AND FOURTH PARTY ACTIONS.

Case No. 07 Civ. 6915 (DLC)

**AFFIDAVIT OF RAY LEU
IN SUPPORT OF TDX
CONSTRUCTION
CORPORATION'S
MOTION FOR SUMMARY
JUDGMENT**

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

RAY LEU, being duly sworn, deposes and says:

1. I am an employee of defendant TDX Construction Corp. ("TDX"), and submit this affidavit in support of TDX Construction Corporation's ("TDX") motion for summary judgment dismissing the Fifth Count of the complaint filed by plaintiff Travelers Casualty and Surety Company ("Travelers"). I am fully familiar with the facts stated below.

2. TDX is a New York corporation with its principal place of business located at 345
Seventh Avenue, New York, New York.

3. TDX entered into three contracts with the Dormitory Authority of the State of New York ("DASNY") to perform construction management services related to the Baruch College – Site B construction project (the "Project").

4. I was employed by TDX during the construction of the Project, and was assigned to work at the Project as the Assistant Project Manager (and at the very end of the Project, as Project Manager).

5. TDX was involved in scheduling and monitoring work performed by Trataros Construction, Inc. ("Trataros") and other prime contractors on the Project. TDX also maintained correspondence exchanged between and among DASNY, TDX, Trataros and others who were involved in the Project. In my capacity as Assistant Project Manager and Project Manager, I had access to, and utilized, the Project schedules and Project correspondence. I also had access to contracts between DASNY and prime contractors, including Trataros, who performed work on the Project.

6. The Project involved the design, site preparation, excavation, and construction of a 785,000 square foot mixed-use structure, with three below-grade levels and 14 above-grade stories, occupying approximately three-quarters of the city block bounded by 24th and 25th Streets and Lexington and Third Avenues in Manhattan.

7. On October 23, 1996, TDX entered into Agreement No. 6500 1802 3153 with DASNY to provide construction management services in connection with the Project's design and pre-construction phase ("Preconstruction Contract"). A true and correct copy of the Preconstruction Contract is attached hereto as **Exhibit 1**.

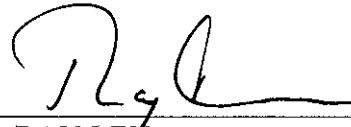
8. On May 12, 1997, TDX entered into Agreement No. 6500 1802 5156 with DASNY to provide construction management services in connection with the Project's construction phase ("Construction Management Contract"). A true and correct copy of the Construction Management Contract is attached hereto as **Exhibit 2**.

9. On January 2, 1998, TDX entered into Agreement No. 6500 1802 4173 with DASNY to provide construction management services in connection with the Project's general conditions work phase ("General Conditions Contract"). A true and correct copy of the General Conditions Contract is attached hereto as **Exhibit 3**.

10. By letter dated August 26, 1999, DASNY's Project Manager, Nicholas D'Ambrosio, advised Trataros, "Please be advised that under general conditions, Article 3, Section 3.01 C states that the 'Owner may act through a representative designated by Owner.' This letter confirms that TDX, Construction Manager for this project, is authorized to direct contractors to perform work." A true and correct copy of this letter is attached hereto as **Exhibit 4**.

11. By letter dated September 8, 1999, Trataros' Project Executive, John Clarke, requested from DASNY "full details concerning the scope of TDX's authority as DASNY's representative," asserting that "the contract is ambiguous, if not inconsistent, in this regard." The letter further stated that "these and other questions are very important to Trataros and are crucial to its proper performance under the contract." A true and correct copy of this letter is attached hereto as **Exhibit 5**.

12. By letter dated October 6, 1999, Mr. D'Ambrosio of DASNY wrote to Trataros, "This letter clarifies previous correspondence in designating TDX Construction as the Owner's Representative for this project. TDX has the authority to direct Trataros to perform extra work with no limit as to the scope or amounts involved. I hope this answers your questions regarding TDX Construction's role." A true and correct copy of this letter is attached hereto as **Exhibit 6**.



RAY LEU

Sworn to before me this
19th day of February, 2010



Timothy B. Froessel

Notary Public

TIMOTHY B. FROESSEL
Notary Public, State of New York
No. 02FR5017556
Qualified in Putnam County
Commission Expires September 7, 2013